court's theory in construing the statute to be constitutional by limiting its operation, in spite of its language, to only those objects intended by the legislature, is correct.

It is a cardinal principle of construction that where part of a statute is constitutional and part unconstitutional, if separable, that which is constitutional will be upheld, provided enough is left to make the law enforceable. *State v. Copeland,* 3 R. I. 33; *Commonwealth v. Hitchings,* 5 Gray 485. But it may be well questioned as to how far a court may go in the application of this principle where the language and meaning of the statute are clear. Limitation of the operation of a law so that it will not extend beyond its constitutional bounds, can not properly be said to be separation. And an attempt at limitation in such a case is likely to result in the substitution of the judicial department of the government for the legislative. This point is discussed fully in *U. S. v. Reese,* 92 U. S. 214.

WHO IS A "TRADER" UNDER THE BANKRUPTCY ACT.

Who is a trader and what constitutes a trading has been the subject of much legal discussion during the past hundred and fifty years. These questions have arisen under the various English and United States bankruptcy acts, and have resulted in numerous decisions, which indicate their application to the various lines of industry.

To constitute a trading under the old English bankruptcy acts there must have been a buying and selling with a view to profit, with an intent to seek a living. Selling what you already possess or produce is not sufficient, nor is a single act of buying and selling enough, unless there is an intention to continue it. *Ex parte Moole,* 14 Ves. Jun. 603; *Parker v. Wells,* 1 T. R. 34; *Heannay v. Birch,* 3 Camp. 233; *Cooke,* 48, 73. A more modern and commercial definition of a trader is one who makes it his business to buy merchandise or things ordinarily the subject of commerce and traffic, and to sell the same for the purpose of making a profit. *In re Cowles,* 1 B. R. 42.

Some difficulty has arisen in defining "trading" and "mercantile pursuits" in section 4b of the 1898 bankruptcy act, and in applying that definition to determine its applicability to the business of buying and selling bonds, stocks and other securities. The recent case of *In re Surety and Guarantee Trust Co.,* Central Law Jour., Vol. 55, No. 18 (Oct. 31), decides that "trader" and "mercantile pursuits" are to be construed in their technical sense, and that the buying and selling of stocks is not a "trading pursuit" within the meaning of the act.

Among those who have been held to be "traders" within the meaning of the bankruptcy acts of 1841 and 1867 are the following: a baker, who buys flour, which he makes into bread, and sells the bread daily to his customers *(In re Cocks,* 3 Ben. 260); a man who boards horses *(In re Odell,* 9 Ben. 209); a saloonkeeper *(In re*

Sherwood, 9 Ben. 66); a butcher *(In re Garrison,* 5 Ben. 430); a livery stable keeper *(Hall v. Cooley,* Fed. Cas. No. 5928): not within the act are a railroad contractor *(In re Smith,* 2 Lowell, 69); one engaged in farming and trading live stock *(In re Ragsdale,* 7 Biss. 154); nor are those within the act who buy and sell merely as incidental to their main occupation. *In re Chapman,* 9 Ben. 311; *In re Kimball,* 7 Fed. 461; *In re Duff,* 4 Fed. 519.

Under the 1898 act the courts seem to restrict the meaning of "trading and mercantile pursuits." They see that in its broadest sense mercantile pursuits would include almost every business. They hold that Congress, as it named specifically a few businesses only and left the rest unmentioned, meant that "trading and mercantile pursuits" should have a restrictive meaning and not be broadened to cover the whole field of commerce. *In re Phila. & Lanes Transp. Co.,* 114 Fed. 403. In conformity with such a view have been almost all the decisions under the recent bankruptcy act. Thus, mining companies are held not to be traders *(In re Park Mining Co.,* 101 Fed. 422); *(In re Tetopa Mining Co.,* 110 Fed. 120); nor insurance companies *(In re Cameron Company,* 96 Fed. 756); nor a water company *(In re New York Water Co.,* 98 Fed. 711); nor the keeper of a saloon and a restaurant *(In re Chesapeake Fish Co.,* 112 Fed. 960); etc. There are, however, two cases which seem to more or less conflict with the great majority of decisions under the 1898 act, following the more liberal interpretation of the word "trader" as seen in the old English decisions and those under our own previous bankruptcy acts. These two cases are *In re Gabriel Sanitarium,* 95 Fed. 271, and *In re Morton Boarding Stables,* 108 Fed. 791, which hold respectively that a corporation maintaining a private hospital for consumptives and a corporation conducting boarding stables are traders.

As to whether the buying and selling of stocks and bonds is a trading or mercantile pursuit there are exceedingly few decisions. Under the bankruptcy law of England it is said to have been held that dealing in shares in joint stock companies was not trading within the meaning of the act; *In re Cleland,* L. R. 2 Ch. App. 466; but in this case the dealing in stock was only incidental to the main business; the appellant there did not act as broker or factor, nor did he buy and sell for a profit, but merely to oblige his friends. Analagous to the English case is that of *In re Marston,* 5 Ben. 313, in which the buying and selling of stock by the bankrupt was casual. Later in *In re Woodward,* 8 Ben. 563, it was squarely decided that the business of buying and selling stock was not a trading pursuit. This case is not discussed at length and would not seem to conform to many of the other decisions under the 1867 act.

The present case is in harmony with most of the decisions under the 1898 act, which as said above, tend to restrict the meaning of "trader" and mercantile pursuits to the technical sense in which they are known to the law, and is important as excluding one more occupation from the operation of the bankruptcy law.